S.B. CIVIL WRIT PETITION NO.1817/2005
Hemraj Vs. State of Raj. and others.

Date : 29.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. G.J. Gupta, for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the petitioner is entitled to exemption from payment of tax in view of the notifications issued by the State Government dated 22.5.2003 which provides that the sale of products as mentioned in the notification manufactured by the institutions, cooperative society or individual registered under Rajasthan Sales Tax Act and with the Khadi and Village Industries Commission constituted under the Khadi and Village Industries Commission Act, 1956, shall have the benefit of exemption from tax. The condition is that this benefit will be available to those in whose favour, certificate has been issued by the authorities competent to do so and another condition is that such exemption shall be available only if the annual gross turnover of the individual does not exceed Rs.30 lakhs.

According to learned counsel for the petitioner, the petitioner's request for grant of certificate is pending before the authorities who can grant certificate under the Rajasthan Khadi and Village Industries Board Act, 1955 but

still the taxing authorities are demanding the tax as well as penalty from the petitioner for which the Assistant Commercial Taxes Officer issued vide Annexure-9.

According to learned counsel for the petitioner, when the petitioner's application for grant of exemption is pending with the authorities, the taxing authority should not recover the tax or penalty amount.

It is not in dispute that the petitioner has not been granted any exemption under the notification dated 22.5.2003 and the recovery which has been sought from the petitioner is for the assessment year 2001-2002. It is not in dispute that the petitioner has not preferred any appeal against that appealable order in pursuance of which, demand notice was issued to the petitioner. Since the petitioner till today is not granted any exemption certificate so as to claim any exemption, therefore, the demand as claimed against the petitioner appears to be just and proper as the assessment order of tax and penalty has attained finality, therefore, the authorities had no option but to demand amount.

So far as the pendency of the application for grant of exemption is concerned, if it is pending before the Khadi Gramodhyog Board, then the application be decided within a period of two months from the date of receipt of certified copy of this order. Copy of this order may be provided by the petitioner to the concerned authority within fifteen

days from today.

With these observations, the writ petition is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya